petition of the petitioner and **the error of the Court of Appeals in sustaining the order of the District Court which petitioner contends is in violent conflict with the decisions of this court. It is also in conflict with the decisions of the Court of Appeals on the question of the right to a hearing under the Declaratory Judgment statute** (pp. 11-15, pet).

A labored argument, which petitioner does not believe has any place in their brief was made on the question of res judicata.

We call the court's attention to the decision in 234 Fed., 152, 156, 164, Landon v. Pub. Util. (p. 14, our petition), as follows:

> **"It is not necessary to determine the question of res judicata in order to determine the question of jurisdiction of this court, because if he is not engaged in interstate commerce, still if these rates are non-compensatory, unreasonable under the Kansas statute, or if they are confiscatory, thus in violation of the Constitution of the United States, the jurisdiction still inheres."**

If the facts alleged are sustained at a hearing, they show a violation of the U. S. Constitution, and jurisdiction "still inheres".

In conclusion we call the attention of the court and the respondents anew to the decisions of this court, Hart v. Keith, 262 U. S., 271, 273, 67 L. Ed., 977, 979; Levering v. Morrin, 289 U. S., 103, 105, 106, 77 L. Ed., 1062, 1064 (see p. 13, pet.), to the effect that:

> **"If the bill makes a claim which if well founded is within the jurisdiction of the court, it is within that jurisdiction, whether well founded or not, and is not to be determined on the facts as they may turn out, or by a decision on the merits."**

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All forms of emphasis used throughout this brief are ours.

Respectfully submitted,

MATTHEW L. BIGGER,
50 E. Broad St., Columbus 15, Ohio,
PAUL R. GINGHER,
8 E. Long St., Columbus 15, Ohio,
HAROLD E. GOTTLIEB,
Citizens Bank Bldg., Zanesville, Ohio,
Counsel for Petitioner.